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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,408	01/14/2004	Kiyoyuki Narimatsu	118338	2627
25944	7590	07/13/2007		
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			EXAMINER NATNITHITHADHA, NAVIN	
			ART UNIT 3735	PAPER NUMBER
			MAIL DATE 07/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary	Application No.	Applicant(s)	
	10/756,408	NARIMATSU, KIYOYUKI	
	Examiner	Art Unit	
	Navin Natnithithadha	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,5-7 and 10 is/are allowed.
- 6) ☒ Claim(s) 3,4,8,9,11,12,15,16,19 and 20 is/are rejected.
- 7) ☒ Claim(s) 13,14,17 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20040114</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 119(a)-(d) based upon an application filed in Japan on 24 January 2003.

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Claim Objections

2. Claims 1, 3, 4, 6, 8, 9, 13, 15, 16, 17, 19, and 20 are objected to because of the following informalities:

As to claim 1, it is not clear as to whether a "cuff" is part of the claimed invention. The Examiner suggests positively reciting the limitation of a "cuff" before the limitation for the "pressure sensor." For purpose of examination, the Examiner has made the assumption that the "cuff" is part of the claimed invention.

Similarly, claims 3, 4, 6, 8, 9, 13, 15, 16, 17, 19, and 20 contain the same language and should be amended accordingly.

Appropriate correction is required.

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3. Claims 1, 3, 4, 6, 8, 9, 13, 15, 16, 17, 19, and 20 are objected to because of the following informalities:

As to claim 1, it is not clear as to whether the phrase "using the inverse transfer function stored by the inverse transfer function memory" is part of the claimed invention.

The Examiner suggests amending lines 10-14 to the following:

a cuff volumetric pulse wave determining means for determining, ~~using the inverse transfer function stored by the inverse transfer function memory,~~ a no-delay cuff volumetric pulse wave having substantially no delay of transmission, based on the actual cuff volumetric pulse wave detected by the pressure sensor and the inverse transfer function stored by the inverse transfer function memory.

For purpose of examination, the Examiner has made the assumption that the determination of the no-delay cuff volumetric pulse wave is based on both the actual cuff volumetric pulse wave and the inverse transfer function.

Similarly, claims 3, 4, 6, 8, 9, 13, 15, 16, 17, 19, and 20 contain the same language and should be amended accordingly.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

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4. Claims 3, 4, 8, 9, 11, 12, 15, 16, 19, and 20 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear whether the claims are directed to an apparatus or a method. See MPEP 2173.05(p) II. In addition, Applicant's Specification, para. [004]-[0022], should reflect any amendments or cancellation of the claims, since these paragraphs reiterate the same language in the claims.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 3, 4, 8, 9, 11, 12, 15, 16, 19, and 20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The rejected claims are directed to neither a "process" nor a "machine," but rather overlap two different statutory classes of invention. See MPEP 2173.05(p) II.

Allowable Subject Matter

6. Claims 1, 2, 5-7, and 10 are allowed.

7. The following is a statement of reasons for the indication of allowable subject matter:

Claims 1, 2, 5, 13, and 14: The prior art of record does not teach an cuff type apparatus for determining volumetric pulse wave by determining a no-delay pulse wave having

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substantially no delay of transmission based on the actual cuff volumetric pulse wave detected by the pressure sensor and the inverse transfer function stored in the inverse transfer function memory. Claims 13 and 14 are substantially duplicates of claims 1 and 2. See the discussion for Double Patenting below.

Claims 6, 7, 10, 17, and 18: The prior art of record does not teach an apparatus for determining a pressure pulse wave by determining a pressure pulse wave produced in the artery based on the cuff volumetric pulse wave detected by the pressure sensor and the inverse transfer function stored in the inverse transfer function memory. Claims 17 and 18 are substantially duplicates of claims 6 and 7. See the discussion for Double Patenting below.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

8. Claims 1 and 2 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 13 and 14. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in

wording (i.e. "device" rather "means"), it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

9. Claims 17 and 18 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 6 and 7. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording (i.e. "device" rather "means"), it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Navin Natnithithadha
Patent Examiner
Art Unit 3735
07/09/2007